

171219tartaglioneC Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 832 (KMK)

5 NICHOLAS TARTAGLIONE and  
6 JOSEPH BIGGS,

7 Defendants.

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8 United States Courthouse  
9 White Plains, N.Y.  
10 December 19, 2017  
2:56 p.m.

11 Before:

12 THE HONORABLE KENNETH M. KARAS,

13 District Judge

14 APPEARANCES

15 JOON H. KIM

16 Acting United States Attorney for the  
Southern District of New York

17 MAURENE COMEY

Assistant United States Attorney

18 BRUCE BARKET, AIDA LEISENNING and ANTHONY RICCO

19 Attorneys for Defendant Nicholas Tartaglione

20 DAVID STERN

21 Attorney for Defendant Joseph Biggs

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1 (In open court)

2 THE CLERK: In the matter of the United States v.  
3 Nicholas Tartaglione and Joseph Biggs.

4 Will counsel please state your appearances for the  
5 record, beginning with the government.

6 MS. COMEY: Maurene Comey for the government.

7 MR. BARKET: Bruce Barket, Aida Leisenning, and no  
8 introductions needed, but Anthony Ricco for Mr. Tartaglione.

9 THE COURT: Good afternoon to you all.

10 MR. STERN: David Stern for Mr. Biggs.

11 THE COURT: Good afternoon to you both. Be seated,  
12 everybody.

13 Is there anything by way of any update or anything  
14 anybody wants to add in light of any other correspondence or  
15 any since we last got together?

16 MS. COMEY: Not from the government, your Honor. I'll  
17 just note for the record that we did make our in camera  
18 submission to your Honor on December 1st per the Court's  
19 request. We also met with the counsel for Mr. Tartaglione on  
20 December 12 and spent two hours together going through in  
21 detail the Rule 16 discovery that was discussed in the papers  
22 regarding the pending motion. And I believe we answered any  
23 questions they had about the Rule 16 discovery, though we  
24 declined to go into any discussion of witness statements.

25 THE COURT: Okay.

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1 Mr. Barket.

2 MR. BARKET: I'll agree with the event and demur on  
3 the characterizations.

4 THE COURT: Okay. Well, to the extent that there were  
5 questions asked and answered given regarding the Rule 16  
6 discovery, I mean, does that in any way -- is there anything  
7 from that, Ms. Comey, that you think alters the record in terms  
8 of gaps being filled in, so on and so forth, or whether there's  
9 redundancy in the discovery?

10 MS. COMEY: No, your Honor. I think that the purpose  
11 of that particular meeting was the suggestion from Mr. Barket  
12 that he wasn't sure what Rule 16 discovery the government was  
13 referencing in its submissions and in its oral argument about  
14 what it was relying on in part for the theory that it raised in  
15 its correspondence. And so we walked through surveillance  
16 video, historical cell site, and toll records and pieced it  
17 together essentially in the way that we see it fitting  
18 together. So that's one piece of what led to the government's  
19 theory, which, as I've mentioned, is subject to ongoing  
20 investigation, but that was one piece.

21 The other piece, which I think we've made clear, is  
22 witness statements and inferences drawn by the government.

23 THE COURT: Okay. All right. Then anything anybody  
24 else wants to add substantively to what's already been  
25 discussed at length and written about at length?

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1 MR. BARKET: No, not from this side, Judge.

2 THE COURT: Ms. Comey.

3 MS. COMEY: No, your Honor.

4 THE COURT: And you're going to continue to be  
5 agnostic, Mr. Stern, your team, on this one?

6 MR. STERN: I'm sorry?

7 THE COURT: You're going to continue to be agnostic on  
8 this one?

9 MR. STERN: Yes.

10 THE COURT: Well, I had reviewed the government's *ex*  
11 *parte* submission before our last conference, and then I  
12 reviewed the entirety of what Ms. Comey submitted, which was a  
13 fairly hardy collection of information. Let me back up for a  
14 second.

15 As we discussed at the last conference at length,  
16 everybody understands what the law is, both with respect to the  
17 government's Rule 16 obligation and then in terms of what the  
18 *Brady* obligation is. And you know, we're in that position that  
19 this is before the trial, right, so the *Brady* right's a trial  
20 right. And what's tricky for the government in every one of  
21 these cases is that they have to be careful not to withhold  
22 *Brady* material that could be material to the defense. And they  
23 have to therefore engage in almost, like, a prediction as to  
24 what might be material to the defense. And as we talked about  
25 at length at the last conference, they're not necessarily in

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1 the best position to make that determination, and that there  
2 are various things that an individual representing a defendant  
3 can look at a report, for example, and say, ah, the way this is  
4 phrased or this particular fact is material to our defense in a  
5 way that a well-meaning prosecutor would not be able to  
6 necessarily ascertain.

7 But in any event, the *Brady* obligation is such that  
8 the government has to disclose information where the  
9 nondisclosure of that information would deprive the defendant  
10 of a fair trial. So the suppression of the evidence would have  
11 to put the whole case in a different light such as to undermine  
12 the confidence in the verdict, and that's right from the *Kyles*  
13 case at page 435. And, of course, materiality is to be  
14 evaluated in the context of the entire record, including the  
15 cumulative effect of all of the evidence, as well as the  
16 absence of any suppressed evidence.

17 What's more, the government's *Brady* obligation,  
18 there's a time component to it. The government's obligation is  
19 to provide so-called *Brady* material in time for its effective  
20 use at trial.

21 Here, there has to be an asterisk to that because  
22 there's also the mitigation process that's ongoing. And we  
23 went back and forth about the fact that there are two things  
24 about this so-called *Brady* material with respect to the  
25 mitigation process -- not the mitigation process -- the capital

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1 review process. Number one is, the government's aware of  
2 what's in its own files, so to the extent that they had  
3 information, including not only the Rule 16 material, but the  
4 witness statements, or any other information, whether it's been  
5 disclosed as Rule 16 or *Brady* or not. And so the point that we  
6 were discussing was the extent to which the defense needs to  
7 tell the government what it already knows.

8           The counter to that point is, again, that there are  
9 things that the defense can tell the government in terms of  
10 dot-connecting; that there are things maybe that the government  
11 doesn't know from its own information, including any witness  
12 statements, that it might miss in terms of evaluating whether  
13 or not to even seek the death penalty in this case. And it's  
14 not a *Brady* right, *per se*, but it's more a question of when it  
15 involves a Court's determination, the exercise of the Court's  
16 discretion into making sure that the discovery process comports  
17 with due process in the context of a death penalty case. So  
18 all the death is different. Case law, of course, has something  
19 different to say in this regard. But the cases do talk about  
20 how the discovery obligations are not triggered by the Justice  
21 Department's own, sort of, internal review.

22           The other piece of this is that the information we're  
23 fighting over has to do with the whereabouts of Mr. Tartaglione  
24 during the sequence of the relevant events. And the issue  
25 there is that the best source of information in that regard is

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1 Mr. Tartaglione. So it's not really a denial of *Brady*  
2 information if the government isn't withholding information  
3 that is available to Mr. Tartaglione. In other words, the  
4 *Brady* violation only happens when the suppression of the  
5 evidence or information is of information or evidence that is  
6 known to the government and not known or knowable to  
7 Mr. Tartaglione. And whether or not he was present for certain  
8 people being killed is something that his counsel can consult  
9 him on.

10 Now, the cases that are cited and relied upon by  
11 Mr. Tartaglione's counsel nonetheless talk about how there can  
12 be violations of the *Brady* right when, for example, the  
13 government fails to produce evidence about a witness that would  
14 expose the witness' information being contradicted by other  
15 evidence in the case. And some of the decisions that counsel  
16 have relied on are on point to that very issue. So I have  
17 reviewed the material with that view in mind, as well.

18 But where I come out on all this is that, first of  
19 all, there is nothing in the materials that I have reviewed  
20 that is inconsistent with what the government has said about  
21 the materials, nor is there anything in the materials that is  
22 inconsistent with the government's theory of the case. So,  
23 that sort of base review I did.

24 I also reviewed it to see if there was, if you would,  
25 lead information; that there might be something in the

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1 materials that would lead to *Brady* information, because the  
2 *Brady* right is not only exculpatory evidence but information  
3 that could lead to exculpatory evidence, and especially in a  
4 capital case, that's a broader review. Relative culpability is  
5 an issue, for example. That's a mitigator. There might be  
6 other things that are relevant to sentencing, because the *Brady*  
7 right in a capital context is not just about culpability, but  
8 also potential responsibility by way of capital punishment.  
9 And there are many mitigating factors that I think expand the  
10 government's *Brady* obligation, clearly. And even though this  
11 has not been deemed a capital case, it's in a posture where  
12 it's being reviewed as a potential capital case.

13           Again, there's nothing in the materials that I found  
14 that Ms. Comey submitted that requires their disclosure.  
15 There's nothing in there that's inconsistent with -- or  
16 anything in there that requires disclosure, even with that  
17 broad a lens, if there's anything in there that might be by way  
18 of mitigating information, because what we're talking about  
19 here is Mr. Tartaglione's whereabouts during the sequence of  
20 events. And, again, he's in a position to know those things.

21           Now, admittedly, what I'm not able to do at this  
22 stage, at this stage, is do any kind of an analysis about how  
23 the information Ms. Comey provided, should it come by way of a  
24 witness or two or three testifying, and whether or not that is  
25 inconsistent with what other people might testify to or what



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1 other evidence in the case is, but I don't see how anybody can  
2 do that at this point - even counsel for Mr. Tartaglione,  
3 because they don't know what other witnesses the government is  
4 going to call. And the government doesn't have an obligation  
5 at this point to disclose witness statements, especially those  
6 statements that don't contain any *Brady* material. And so, what  
7 I would say is, is that, that's something that's going to have  
8 to be continually looked at.

9 And the government understands, of course, that its  
10 *Brady* obligation is a continuing obligation. Ms. Comey has  
11 acknowledged that on a number of occasions. She's acknowledged  
12 that the government's theory has evolved, which, if it  
13 continues to evolve, might necessarily change the *Brady*  
14 obligation, because the *Brady* obligation obviously has to  
15 comport to what the case is about. And if the case is that the  
16 government's theory of the case changes, then so, too, might  
17 its *Brady* obligation.

18 Now, I recognize that beyond whether or not there's a  
19 *Brady* obligation to turn over or other sort of non-Rule 16  
20 discovery rule obligation to turn over witness statements that  
21 there is an exercise of discretion that courts have and that  
22 they've exercised. And I have viewed this material with the  
23 understanding that even if some of this material is not  
24 technically disclosable under Rule 16 and even if the  
25 government doesn't think that it is *Brady* material, that if I

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1 thought that it could lead to *Brady* material, then, in the  
2 exercise of my discretion, I could press the government to turn  
3 it over -- require the government to turn it over. But based  
4 on my review and based on the government's theory, as I  
5 understand it, and after considering all of the arguments that  
6 we had when we were last together, my view is that even in the  
7 exercise of that discretion, there is no basis at this point or  
8 need or justification to require the government to turn over  
9 the information because it just doesn't rise to the level of  
10 *Brady* material, in other words, anything beyond what the  
11 government has already disclosed.

12 In reaching that conclusion, I didn't take into  
13 consideration the safety issues. I mean, I think that's  
14 another layer to this, but I think there are ways to deal with  
15 the safety issues. So if I thought that there was something in  
16 here that was disclosable, then I would then work with you all  
17 to try to figure out some way to address any safety concerns  
18 the government would have, so that's not the basis of this  
19 ruling. The basis of this ruling has to do with the content of  
20 the materials.

21 But to be clear, this is without prejudice to an  
22 ongoing review should circumstances change. And I will, of  
23 course, expect the government to continue to very carefully  
24 consider its *Brady* obligations, recognizing that it is an  
25 ongoing obligation. And should the government's theory change,

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1 what might not have been *Brady* yesterday might very well be  
2 *Brady* tomorrow.

3 And to the extent the government does develop  
4 additional information, whether it's by witness statements or  
5 any other information that then contradicts or later on is  
6 determined to contradict or could potentially contradict the  
7 information that was provided in the *ex parte* filing, then I  
8 would expect the government, first of all, to advise counsel of  
9 the *Brady* material, or if the government thinks it's a close  
10 question but is not going to, to advise everybody that maybe  
11 there's a need to have another *ex parte* submission to have me  
12 review the material to determine whether or not there's a *Brady*  
13 obligation to disclose either this material or anything else  
14 that might be inconsistent with this material. So that's the  
15 ruling of the Court.

16 Other issues to take up?

17 Mr. Ricco, good to see you.

18 MR. RICCO: Yes. I did have one observation.

19 THE COURT: Please.

20 MR. RICCO: Though I do not disagree with the Court's  
21 analysis or its conclusion, I would share with the Court that  
22 while the Court is correct in its view that, to some extent,  
23 this is about the whereabouts of Mr. Tartaglione, and he's in  
24 the best position to know that, there is an area of  
25 investigation in this case that is outside of that. But

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1 included in your order and in your decision, because much of  
2 what we reviewed with the government at the meeting on the  
3 12th is information that is certainly not about the  
4 whereabouts of Mr. Tartaglione. And there was much to observe  
5 and much to discover about things that he would not have been  
6 aware of because he was not present at that time and place, but  
7 I think that your Honor addressed that when you talked about  
8 the broader concept of mitigation for equally-culpable  
9 participants. And then that takes us to why. What was that  
10 role of those equally-culpable people if they existed outside  
11 of his knowledge or outside of his presence?

12 But I'm satisfied with the Court's analysis of the  
13 events as I sit here and think about the information that we  
14 shared by the two of us, by the government. It included it  
15 anyway. It certainly went well beyond his whereabouts and more  
16 about information that's along the lines that the Court has  
17 discussed.

18 THE COURT: Absolutely. You know, we had a very hardy  
19 discussion the last go-around, and I mean that. I thought it  
20 was not only excellent advocacy, but it was very helpful to  
21 have the viewpoint and to express the need to have the review  
22 of this material done with a very broad lens. But the genesis  
23 of all of this was the government saying, you know, its theory  
24 had evolved and that Mr. Tartaglione was not the person  
25 directly responsible for the deaths of all the individuals

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1 because he wasn't there, and so the core of it was really that  
2 piece of the information.

3 And to the extent that, as this case evolves and takes  
4 shape, the government's theory about the relative roles of  
5 individuals develops in a way that is inconsistent with the  
6 materials that I reviewed, for example, then the relative  
7 culpability piece of this is going to become potentially very  
8 different. And that's why I'm saying what I'm telling myself  
9 and I'm telling you all is that this is not the end of the  
10 review; it's the beginning. And it's not the end of the  
11 government's obligation as to this topic; it's only the  
12 beginning.

13 And, as I mentioned, the cases that your co-counsel  
14 cited rightly so and relied on, talk about not only the *Brady*  
15 obligation, but even a Court's obligation in the exercise of  
16 its discretion to make sure that its *Brady*, its *Giglio* -- to  
17 the extent that there are going to be -- if there were  
18 statements from person X that directly contradicted statements  
19 from person Y, you all should know about that before X and Y  
20 testify.

21 MR. RICCO: Right.

22 THE COURT: But I don't have X, Y and Z to compare,  
23 right, so, again, because of where we are in the process. And  
24 I can't tell the government give me all your files now for ex  
25 parte review. Some of that is to be practical, right, and some

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1 of it is because we, as a matter of law, the *Brady* obligation  
2 starts with the government. The *Brady* obligation isn't on the  
3 Court, because otherwise the law would be, okay, prosecutor,  
4 give me all your files, let me do the *Brady* review. And if it  
5 means I don't do E.R.I.S.A. cases for a while, I'd be happy to  
6 do it, but that's not how the law works.

7 But given the nature of this case and the potential  
8 punishment the government is going to seek, I'm all for  
9 thinking creatively about how to make sure that there is a  
10 check on whether or not the government is honoring its *Brady*  
11 obligation, broadly defined.

12 Anything else aside from this issue that we need to  
13 take up? Does anybody have a suggestion about when we should  
14 next get together?

15 MR. BARKET: This is kind of a point of increasing  
16 concern for us.

17 THE COURT: Okay.

18 MR. BARKET: Just coincidentally, I don't think  
19 anybody thought about it when we set the date, but I believe  
20 this is the date of Mr. Tartaglione's arrest, so it's been  
21 literally a year since he's been incarcerated. And we don't  
22 have, obviously, a decision on authorization. We don't really  
23 even have a schedule for it. We don't even have a time frame  
24 for it. We're just, "We'll let you know when we let you know."

25 We submitted our package back on August 27.

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1 THE COURT: So it's been hanging around for almost  
2 four months.

3 MR. BARKET: So, you know, the process, as I  
4 understand it, hasn't -- the package and the kind of decision  
5 hasn't made it very far within the government's own structure.

6 THE COURT: Can I just interrupt.

7 One quick question on that point, Ms. Comey. I don't  
8 know if, down at the Justice Department, if there are waiting  
9 for Mr. Biggs' counsel to present the package, or are they  
10 going to evaluate Mr. Tartaglione's package separate and apart,  
11 and whenever Mr. Biggs' team gets their package there is  
12 whenever they get it there? Do you know?

13 MS. COMEY: I'm waiting for an answer on that  
14 question, your Honor.

15 THE COURT: Okay.

16 Go ahead, Mr. Barket, because I thought maybe that  
17 would help --

18 MR. BARKET: To that point -- just one of the things I  
19 was going to mention, to that point, we have kind of asked that  
20 they make the decision. We don't -- Mr. Biggs was arrested  
21 six, seven months after Nick was, so, we don't want to -- we  
22 made that point, obviously, to the government.

23 So when we meet next is, I would think, the same block  
24 of time that we've been doing, 30 to 45 days is probably not  
25 inappropriate. And there's still some discovery out there that

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1 we haven't gotten back, or they haven't gotten back, which is  
2 the DNA out of Mr. Benderoff's truck, I think the DNA or fiber  
3 analysis out of Nick's truck, and a few other miscellaneous  
4 things.

5           So, we still have some discovery issues to clean up,  
6 but we're actually starting to discuss and think about motion  
7 practice, which I know is wildly different depending on the  
8 authorization decision, but I don't want to see another huge  
9 amount of time go by and have Nick be sitting, waiting for  
10 this. If there's a time limit on it, I suppose, except for us  
11 at some point becoming absolutely unable to wait any longer and  
12 really forcing the issue.

13           I don't know if there's anything the Court can do or  
14 if there's anything that can happen here to move this along a  
15 little bit. It's not like it just came upon them, right? The  
16 December 19 arrest date was itself several months, four or five  
17 months after the date of the incident or the disappearance.

18           THE COURT: Right, but the question about whether or  
19 not the Justice Department is going to authorize seeking the  
20 death penalty has nothing to do with that, right? So, it seems  
21 to me your argument in terms of the clock ticking starts when  
22 you submit your package, and then they have it, and they need  
23 to start reviewing.

24           But, for example, to the extent that the people who  
25 are involved in the decision-making process in the Department



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1 of Justice want to wait to see what package is presented on  
2 behalf of Mr. Biggs, I'm not sure that's any less rational than  
3 our Second Circuit waits sometimes for related cases to catch  
4 up to one another so they can consider them together. I don't  
5 know the answer to that. I have no idea how that process  
6 works. I used to know, and that was a long time ago.

7 But I think if there is motion practice to be done  
8 that has nothing to do with whether or not the Justice  
9 Department is going to authorize, then we should get to that,  
10 because I'm sure there are some motions that are tee'd off of  
11 that decision and there are others that are not. A motion to  
12 suppress might be something that would have nothing to do with  
13 whether or not they're going to authorize.

14 So, I agree with you in terms of continuing to meet at  
15 regular intervals, at short intervals. And I also agree with  
16 you that if there is motion practice that we can get going,  
17 let's get going on it. And I also agree with you that if you  
18 want to explore, you know, how it is that there's a time limit  
19 put on the Justice Department, I'll read anything you submit.  
20 If you think that there's something that can be done by way of  
21 Court intervention, I'm not making any promises, except I will  
22 read what you submit, because you're right, this cannot go on  
23 indefinitely. I don't think anybody is predicting that.

24 Ms. Comey gave us a time frame when we were last  
25 together that presumably is a time frame she was given by

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1 somebody in the Justice Department. So, if they said four to  
2 six months and we're 14 months into it, then somebody was not  
3 telling us the truth.

4 I'm not saying we wait until then to say, oh, wait a  
5 minute, you weren't telling us the truth, but when we bump into  
6 the outer edges of that time estimate, then I think it's fair  
7 to start not just asking questions, but asking questions with a  
8 little emphasis. And if there's more to be done --

9 MR. BARKET: I think at this stage, I raise this now  
10 without anything the defense is going to do now because we  
11 don't yet have the discovery completed. So whatever steps we  
12 would take in a case absent that, we would still be waiting for  
13 the discovery to be complete. So that's probably the next  
14 event that we would like to kind of have that wrapped up so  
15 that there's not any other DNA or forensic testing that's out  
16 there.

17 THE COURT: But if, for example, and I'm not  
18 suggesting that this is the case, but if, for example, you  
19 wanted to suppress, you know, fruits of a search, you wanted to  
20 suppress post-arrest statements, I don't know why we would wait  
21 to get that tee'd up.

22 MR. BARKET: Yes. There actually are some reasons,  
23 depending on the context. It's not something we haven't  
24 thought about.

25 THE COURT: All right. I'm sure that's true.

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1 MR. BARKET: But for now, I wanted to raise the time  
2 issue because it really is becoming increasingly concerning to  
3 us, especially the context. It's not as if we just have --  
4 we're just waiting on us. Now we have somebody who is several  
5 months, a number months, half a year or more behind us, and  
6 looking at that and then whatever take place afterwards.  
7 Hopefully, the forensics, the discovery can be -- we can let  
8 known that discovery will be done, and then come back and check  
9 some more.

10 THE COURT: Okay.

11 Ms. Comey.

12 MS. COMEY: A most recent message from Quantico is  
13 that a draft report is finished, we are waiting on a supervisor  
14 to review it, and I've been told that it's been moved to the  
15 top of that supervisor's stack. So the hope is that we'll get  
16 that soon and then we'll not have anything else from Quantico  
17 that we're waiting on.

18 THE COURT: So as in "soon" as in weeks soon?

19 MS. COMEY: They were not willing to commit.

20 THE COURT: Okay. It doesn't sound like it's -- I  
21 mean, it's a good thing that it's at the top of the pile, so  
22 one would hope that does mean weeks. And maybe, when we agree  
23 on a conference date, you could suggest to them that it would  
24 be really, really, really bad if something on the top of the  
25 pile didn't move between now and well before that next

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1 conference.

2 MS. COMEY: Yes, your Honor.

3 THE COURT: Right? If there's anything else you want  
4 me to do, you'll let me know.

5 MR. BARKET: I appreciate it, Judge. We're not asking  
6 for anything else at this point.

7 THE COURT: I appreciate the heads up. All right.

8 So a conference date 30 to 45 days out is what you all  
9 are looking for?

10 MR. BARKET: Yes.

11 THE COURT: How about February 5 at 10:30?

12 MR. BARKET: Is that a --

13 THE COURT: That's a Monday.

14 MR. BARKET: I'm actually --

15 THE COURT: You're on trial, not available that day?

16 MR. BARKET: Not available that day.

17 THE COURT: Are you available that week?

18 MR. BARKET: Yes, I'm actually -- I think I'm back in  
19 the state on the fifth or sixth of that week.

20 THE COURT: Okay.

21 THE CLERK: The seventh?

22 MR. BARKET: The seventh is fine.

23 THE COURT: At 10:00.

24 Ms. Comey, does that work for you?

25 MS. COMEY: Yes. Thank you, your Honor.

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1 THE COURT: Mr. Stern.

2 MR. STERN: It does.

3 THE COURT: Does that work?

4 MS. LEISENNING: That works.

5 THE COURT: February 7 at 10:00 o'clock. Don't give  
6 them that date. Give them an earlier date, because that seems  
7 like too far away. It seems like two months away.

8 Any objection to excluding time from now until  
9 February 7?

10 MS. COMEY: No.

11 MR. BARKET: I'm sorry, Judge. What was what?

12 THE COURT: Any objection to excluding time between  
13 now and February 7?

14 MR. BARKET: No.

15 MR. STERN: No.

16 THE COURT: Then I will prospectively exclude time  
17 from today until February 7 of 2018, because I find it's in the  
18 interest of justice to do so. That finding is based on the  
19 fact that counsel need time to review the discovery, prepare  
20 whatever submissions need to go to the Justice Department, and  
21 then also review discovery for any potential motions that might  
22 be filed, and it gives the government one last chance to get  
23 the forensic report done. And so now that it's at the top of  
24 the pile, we have every reason to think it's going to be  
25 forthcoming soon.

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1 I find that the interest of justice from this  
2 exclusion outweighs each defendant's and the public's interest  
3 in a speedy trial. The finding is made pursuant to 18 U.S.C.  
4 Section 3161(h) (7) (A).

5 Anything else?

6 MS. COMEY: Not from the government, your Honor.

7 THE COURT: Anything else?

8 MR. BARKET: Not from us. Thank you.

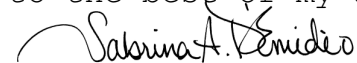
9 MR. STERN: Nothing.

10 THE COURT: We're adjourned.

11 Thank you. Happy holidays.

12 - - -

13 Certified to be a true and correct  
14 transcript of the stenographic record  
15 to the best of my ability.

16 

17 U.S. District Court  
18 Official Court Reporter